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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,147	12/31/2003	Patricia A. Woodward	16191	7921

4859 7590 04/29/2005

MACMILLAN SOBANSKI & TODD, LLC  
ONE MARITIME PLAZA FOURTH FLOOR  
720 WATER STREET  
TOLEDO, OH 43604-1619

EXAMINER

THOMPSON, HUGH B

ART UNIT PAPER NUMBER

3634

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/750,147

Applicant(s)

WOODWARD, PATRICIA A.

Examiner

Hugh B. Thompson II

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments, see pages 5 and 6, filed 2-7-05, with respect to the rejection(s) of claim(s) 1-20 under Sections 102 and 103, have been fully considered and are persuasive.

Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Weller #5,749,437.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claims 1, 12, and 19, the phrase "bag-like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "bag-like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1, 2, 4-6, 8, 9, 11, 12, 14-16, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Weller #5,749,437. Weller, as best seen in Figures 1 and 2, and recited in column 2, lines 29-54, column 4, lines 54-67, and column 6, lines 8-25, discloses a 5 sided sewn cover device adapted to fit upon the upper end of a ladder, the cover device having openings at either end, those ends having elastic members 5 or 4a attached/sewn thereon, both permitting placement of the cover device on varying sizes of ladders and snug fits thereon, and the cover device also being made from a flexible cotton based material, i.e., canvas.

Claims 1-7, 11-17, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Brick #4,498,579. Brick discloses a reversible protective device 12 having a body formed of terry cloth material, and an elastic band 22 secured to an open end of the device to constrict the open end against an attached article 10.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Weller as applied to claims 1, 2, 4-6, 8, 9, 11, 12, 14-16, and 18-20 above, and further in view of Everson et al #6,594,836. Weller fails to disclose the elastic band secured to the device by means of hot glue. Everson et al, as recited in column 3, lines 49-57, teach the utility of fabric items (bed sheets) having sewn attachment elements (pouches) thereon, the attachment elements also securable to

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the fabric items by means of hot glue. Therefore, to one of ordinary skill in the art, it would have been obvious, as a matter of engineering design choice, to secure the elastic member of Weller to the cover device by means of hot glue as taught by Everson et al, this being no more than a design choice, not expected to produce any new and unexpected results.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cassells #5,647,453, Stierle #6,435,304, and Hardy #5,638,915 are cited to teach ladder cover attachments.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hugh B. Thompson II whose telephone number is (571) 272-6837. The examiner can normally be reached on Monday thru Friday 9 am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on (571) 272-6856. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Hugh B. Thompson II  
Primary Examiner  
Art Unit 3634

April 27, 2005